

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

ROY MAYNOR,  
Plaintiff,

VS.

THE DOW CHEMICAL COMPANY,  
Defendant.

\*  
\* CIVIL ACTION NO.  
\* 3:07-cv-00504  
\* (JURY)  
\*  
\* COLLECTIVE ACTION  
\*

\*\*\*\*\*

ORAL DEPOSITION OF ROBIN CAMPBELL

APRIL 2, 2009

\*\*\*\*\*

*Condensed Copy  
With Keyword Index*

Exhibit B



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1 through the entire negotiations of this article. So, it  
2 changed, maybe not conceptionally but verbiage changed,  
3 here and there as we went through it.

4 Q I don't understand what you told me. You said  
5 that it didn't change conceptionally, but verbiage  
6 changed. Did I hear that right?

7 A Yes, sir.

8 Q Help me understand, if you remember, how this  
9 skills initiative evolved into the final form that we  
10 are looking at in Exhibit 1.

11 A I'm not going to remember the detail, but I  
12 know that the Union on the intent of the article, I  
13 believe our original proposal, was a little shorter.  
14 They came up with some verbiage that they thought made  
15 it more palatable. The site foundational skills at the  
16 time we originally proposed it had three skill levels  
17 per year versus the two that it ended up with, along  
18 those lines.

19 Q Meaning the advancements? Two skill levels  
20 versus three?

21 A Yes, sir.

22 Q You mentioned that there was some -- at least  
23 reported to you some negative information about  
24 disciplinary action.

25 A Yes, sir.

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1 Q Was any of that altered or in any way changed?

2 A No, sir.

3 Q All right. So, the language relative to the  
4 corrective discipline stayed in draft form up until the  
5 final version that we are looking at today?

6 A I need to be able to make -- this is -- we  
7 negotiated in 1993 -- I'm sorry, 2003. What you are  
8 looking at right now is what I call mid-term negotiation  
9 changes that occurred in November of 2006. So, what we  
10 are looking at right here is not what was in the  
11 contract when the contract was ratified in May of 2003.

12 Q Are you sure?

13 A Uh-huh.

14 Q Okay. Let's go off the record for a minute.

15 (A recess was taken and proceedings  
16 resumed).

17 Q (By Mr. Siurek) Mr. Campbell, I want to make  
18 sure my record is clear. So, I'm going to show you  
19 what's been marked as Campbell Exhibit No. 2, and ask  
20 you if that is a true and correct copy of the Mid-Term  
21 Agreement of the Collective Bargaining Agreement that  
22 you referred to in Exhibit 1.

23 (Deposition Exhibit No. 2 was marked).

24 A Yes, sir, mid-term, November 20th, 2006. Yes,  
25 sir.

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1 Q (By Mr. Siurek) Right. Now, if you'll go back  
2 and read the language of the document that's Exhibit 1.

3 A Uh-huh.

4 Q It's different than the Mid-Term Agreement in  
5 Exhibit 2.

6 A Maybe I missed that. Hold on a second. Maybe  
7 I missed that.

8 Q Is it not?

9 A Yes.

10 Q So my record is clear, Exhibit 1 is a document  
11 that was executed in final form in 2003. And the  
12 Mid-Term Agreement, which modified the language, was not  
13 signed until November of 2006?

14 A Yes, sir. I'm missing a line in here that I  
15 was looking for. So, yes, sir, this is it.

16 Q And just so the record is clear, in 2003, the  
17 document that was ratified, the intent of this article,  
18 it said, Failure of employee to attempt to reach these  
19 requirements could result in corrective disciplinary  
20 action.

21 A Yes, sir, it did. That's the line I missed.

22 Q Now, in the negotiations, am I correct that  
23 there were -- I'll try and ask it globally -- there were  
24 a number of other issues that needed to be addressed in  
25 the Collective Bargaining Agreement, as well?

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1 A Yes.

2 Q And there were negotiations around a number of  
3 other issues besides the skills initiative?

4 A Yes, sir.

5 Q Set those aside, and I want to talk about the  
6 bargaining as it only relates to the skills initiative.  
7 Tell me if you have any recollection about whether  
8 anyone on the management side or on the labor side  
9 raised any issues around how or if the skills initiative  
10 participation was compensable by the company.

11 A Yes.

12 Q Okay. First question is: How often was that  
13 discussed and by whom? And then everything you remember  
14 about what was being said.

15 A I don't know how many times. It was not the  
16 predominant part of the discussion, but I know it did  
17 come up at least a couple of times from the Union.

18 Q And when you say it came up a couple of times,  
19 what was said or how did it come up?

20 A As you discussed, the article and training,  
21 what is compensable and what is not.

22 Q And what was the response of management?

23 A I think the -- it's changed so much over the  
24 years, I just have to think, as far as I recall, is that  
25 they were going to -- the original assessment was going

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1 to be paid for. And if they had to go -- and on this is  
 2 one, I can't remember. If all of the reassessments --  
 3 well, I don't think all the reassessments were paid for,  
 4 maybe none of them were; but the training, there wasn't  
 5 any required training and those were the discussions for  
 6 it. The company wasn't requiring any training. They  
 7 work with the college to make training available if an  
 8 employee thought training was something that would help  
 9 them or they needed, but we didn't require any training.

10 Q Let me repeat what I wrote down, so I make sure  
 11 I'm understanding your testimony.

12 A Okay.

13 Q There was conversation around the  
 14 compensability of participation in skills initiative; is  
 15 that right?

16 A Yes, sir.

17 Q And it related to what would be compensable and  
 18 what would not be compensable?

19 A Yes, sir.

20 Q And you, I believe, said to me that it was  
 21 concluded in 2003, that the original assessment was  
 22 going to be paid.

23 A Yes, sir.

24 Q And the reassessments were not going to be  
 25 paid; is that right?

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1 probably not going to have to have a reassessment?

2 MS. PATTERSON: Objection, form.

3 A From the discussions that went on during  
 4 negotiations and the scores that were done in  
 5 assessments, they've done these assessments prior to  
 6 that. 2001, 2002, I don't know. I was off doing  
 7 Carbide, but somewhere in there the population had been  
 8 tested in 2001, and 2002. Some of the scores were lower  
 9 than they had been assessed by ACT as what we should  
 10 have in order to run our plant, but the Union's position  
 11 was we were told these didn't matter, people didn't try,  
 12 they just went in there and colored in boxes and really  
 13 didn't pay attention to anything.

14 Q (By Mr. Siurek) Well, I don't want to belabor  
 15 the point, but is it your testimony that the position of  
 16 management was that achieving these foundational skill  
 17 -- skill profile levels were not going to be difficult  
 18 for the employees; and as a result of that, the  
 19 reassessment and training time wasn't going to be  
 20 compensable?

21 MS. PATTERSON: Objection to the form.

22 A The thought was, we were not requiring any  
 23 training, none, zilch, if you needed to reassess or  
 24 whatever. We didn't require any training to be able to  
 25 do that. On the reassessments, I don't really remember

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1 A As well as I can remember, yes.

2 Q And that training was not required.

3 A That one I do remember.

4 Q What about being paid?

5 A As far as?

6 Q Training.

7 A In this case, we were not requiring any  
 8 training. So, we were not paying for any training.

9 Q Okay. So, just making sure that when I'm  
 10 asking a question about what's compensable and not  
 11 compensable, training was not compensable in 2003?

12 A In 2003, as it related to the skills  
 13 initiatives, foundational skills, that is a true -- yes,  
 14 it was not compensable based on we were not requiring  
 15 any training.

16 Q Okay. Now, let's stay in 2003. Why was the  
 17 original assessment compensable and the reassessment not  
 18 compensable?

19 A Let me see if I can remember what the --  
 20 assessments were required, the reassessments weren't  
 21 required at the time, assuming that people weren't going  
 22 to have trouble with the assessments.

23 Q Okay. Just so that -- I'm just trying to make  
 24 sure the jury understands. So, the idea here is that we  
 25 are going to pay you for the assessments because we're

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1 where it was at that time, why it was where it was, but  
 2 the belief was, yes, these assessments or skills  
 3 initiative was only the foundation, exactly why they  
 4 were called foundational skills, to really get at what  
 5 the training that the company was wanting us to go and  
 6 do, which was very specific operations, get everybody to  
 7 that next level. It was during the part to get here  
 8 when our work force was assessed that it really didn't  
 9 look like that they could be successful at this level  
 10 because there could be some foundational skills gaps.  
 11 The foundational skills gaps are written in a 9th grade  
 12 education level and our employees, even prior to 1996,  
 13 were a high school education was required for the job.  
 14 Since '96, it's a degreed individual to go and do the  
 15 job. That was the basis behind the concept.

16 MR. SIUREK: I'm going to have to object to  
 17 the responsiveness of the answer.

18 Q (By Mr. Siurek) Let me ask it to you again.

19 The employees were paid for the original assessments?

20 A Yes, sir, we required the original assessment.

21 Q They were not paid for the reassessments? We  
 22 are in 2003.

23 A Right. Let's think of this twice. They were  
 24 assessed 2001, 2002, I don't know exactly when. From  
 25 the Union's perspective of a lot of people dogged it or

8 (Pages 29 to 32)

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1 Q 2006, same question for all three.  
2 A By November of 2006, we've agreed to go a  
3 different approach.  
4 Q So, at least through November of 2006, training  
5 is not paid?  
6 A Correct.  
7 Q Let's talk about this skills initiative  
8 program, itself.  
9 A Okay.  
10 Q It's my understanding there is six skill sets,  
11 if you will, or groupings that employees are tested for;  
12 is that correct?  
13 A Yes, sir.  
14 Q Do you remember what they are?  
15 A Foundational Skills 1 is reading for  
16 information, applied math, and locating information.  
17 Foundational 2 is teamwork, observation, and applied  
18 technology.  
19 Q Okay. Then wait a minute. You said for  
20 Part 2?  
21 A Was observation, teamwork, and applied  
22 technology.  
23 Q All right. Correct. Now, am I correct in my  
24 understanding that there was a sequence for the workers  
25 to test and complete each of these sections?

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1 A The Foundational Skills 1, yes. And it was  
2 reading for information, applied mathematics, and then  
3 locating information.  
4 Q And each had to reach a certain skill category  
5 or skill level?  
6 A Skill level.  
7 Q Excuse me. Do you remember what it was for  
8 each of those three?  
9 A No.  
10 Q Do you have any reason to disagree with me that  
11 RFI was 6, applied mathematics was 6, and locating  
12 information was 5?  
13 A Nope, because that's what I would have said,  
14 but would have been guessing.  
15 Q Now, let's talk about the initial testing. How  
16 were each of the employees initially tested? How many  
17 tests did they have -- require to take?  
18 A I really don't know that. I don't know if when  
19 they did the original testing in '01, and '02, did they  
20 test -- they would have -- Foundational Skills 1 would  
21 have all been tested at the same time. Foundational  
22 Skills 2 would have probably been tested at another  
23 time. I don't know if they took everybody through all  
24 six or if they just took them through one. I have no  
25 idea.

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1 Q Okay. Who would know?  
2 A Mike Gregg would know.  
3 Q Well, let me ask you this question: How would  
4 you know if an employee was complying with the skills  
5 initiative if you don't know if they took one or six  
6 foundation tests?  
7 A When I got the report from the college, it  
8 would tell me have they assessed in Foundational 1. It  
9 would have an X if it was yes. If they have assessed in  
10 Foundational 2, it would have an X. And if they  
11 reassessed in Foundational 1 or 2, it would have an X.  
12 So, I could look at the report and know has somebody  
13 assessed and have they reassessed.  
14 Q Now, with regard to the original assessment,  
15 how long did a test take?  
16 A When they originally took the test, you took  
17 all three: Reading for information; locating  
18 information; applied mathematics at the same time. So,  
19 it was a four and a half hour test.  
20 Q For three of the six?  
21 A Uh-huh.  
22 Q Is that a yes?  
23 A Yes, sir.  
24 Q What about the remaining three?  
25 A It was a separate four and a half hour test.

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1 It's a proctored exam. You have X amount of time to  
2 take one, then that one would end and you'd go on to the  
3 next one.  
4 Q I didn't ask you this earlier, but what was the  
5 -- what was the intention or what was the objective  
6 behind the skills initiative? What was it supposed to  
7 accomplish, if you know?  
8 A The -- in 19 -- technology has changed. We are  
9 a very technical company. In 1996, it had been  
10 determined that we needed to raise the educational  
11 requirements to come to work for the company. So, we  
12 went to a two-year degree being required. Then we shut  
13 down one of our plants that flooded the rest of the -- a  
14 very low technology plant. And there were questions  
15 about -- overall, this triggered some questions and some  
16 issues that our incumbent work force is not required to  
17 have a two-year degree. We need to raise that level so  
18 that our incumbent work force can have the same skill  
19 and abilities. That was the original intent, which  
20 really goes and focuses at the process technology, the  
21 other, Section 2 of this contract.  
22 As they were working through there and setting  
23 up that, I don't know if they had people testing that as  
24 they were first trying to validate and see if they were  
25 on the right things because there were some gaps noticed



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1 that people may not have the skill and ability to  
2 understand the training that we are getting ready to go  
3 have them do. So, that's where the foundational skills  
4 part started being looked at.

5 Q Was the idea that the skills initiative  
6 program, the intention of it, was to raise the skill  
7 level of the existing operators to the point where they  
8 would be needed to do -- to fulfill the expectations of  
9 their job?

10 A Yes, sir.

11 Q Okay. Was the converse true that if they were  
12 not successful in meeting the skill levels that they  
13 would not be meeting the expectations of their job?

14 A Of the future job of what we needed our  
15 operators to be able to do.

16 Q But they would still be operators?

17 A Yes, sir.

18 Q Now, you told me that the original assessments  
19 were lumped into four and a half hour segments.

20 A Yes, sir.

21 Q Talk to me about the reassessments.

22 A Well, whenever you profiled or did not profile,  
23 you didn't profile at Foundational Skills 1. It was  
24 broken up. You took reading for information, locating  
25 information, applied mathematics and you could have

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1 profiled in 1, 2, 3 or none. And if you profiled -- and  
2 let's just use 2 out of 3 as the example -- there's no  
3 need for you to go and sit through a four and a half  
4 hour assessment for the two hours you already passed.  
5 So, you would only go and take that one that you had not  
6 profiled in yet.

7 Q My question was bad. How long was a  
8 reassessment test per functional area of the skills  
9 initiative?

10 A The time laid out is one and a half hours, but  
11 I'm going off of memory. It's a proctored test. It's a  
12 timed test. I actually believe they were between 45 --  
13 somewhere around 45 minutes.

14 Q Tell me why you believe they were somewhere  
15 around 45 minutes.

16 A Well, because when we got asked all these  
17 questions about this, I wasn't here during that time.  
18 So, I went and took all of them so I would understand  
19 it.

20 Q How did you do?

21 A I profiled. I profiled in five immediately.

22 Q What was your nonprofile in?

23 A The one that was more, what I would call,  
24 operator specific. It was the applied technology. And  
25 at the time what I scored was not what the profile level

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1 was. It ended up being what the profile level was.

2 Q We'll talk about this in a little bit more  
3 detail, but you are aware that the Union filed a  
4 complaint with the Department of Labor with regard to  
5 the skills initiative and skills initiative training,  
6 correct?

7 A Yes, sir.

8 Q I want to -- in its complaint it says, Dow  
9 Chemical requires each worker to take an initial test in  
10 each of these six areas. Do you dispute that?

11 A No, I'm okay with that.

12 Q Employees are not paid for the time spent  
13 testing.

14 A I don't agree with that. Based on the first  
15 sentence, you said -- didn't you say, The company  
16 required? Could you reread the first sentence?

17 Q We'll come back to it. I just want to see what  
18 we agree on and what we don't agree on.

19 A Okay.

20 Q Then it goes on to say that, Once the  
21 employee's skill level has been determined in each area  
22 the employee is expected to train without pay in order  
23 to advance at least two skill levels per year until the  
24 employee has achieved the required skill level in all  
25 six categories. True?

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1 A What is it that you are asking me to say true  
2 to? True that that's what that said or true that's what  
3 the company was saying?

4 Q I'm reading you what this says and asking you  
5 if you agree with it?

6 MS. PATTERSON: And for the record, you are  
7 reading the complaint letter that the Union sent to the  
8 DOL.

9 A I understand that. I understand what you read.  
10 I want to make sure I understand -- I am not agreeing  
11 with that last sentence that you read, that that was the  
12 company's position on this. That is what the Union  
13 stated. I'm not going to say that the company aligned  
14 with that position.

15 Q (By Mr. Siurek) That's what I'm asking you.  
16 This is what it says. Each employee must achieve a  
17 skill level of a 5 in two categories and a skill level  
18 -- excuse me. Strike that. Once the employee's skill  
19 level has been determined in each area the employee is  
20 expected to train without pay in order to advance at  
21 least two skill levels per year until the employee has  
22 achieved the required skill level in all six skill  
23 categories. Is that a true statement?

24 A No.

25 Q Tell me why it is not a true statement.

11 (Pages 41 to 44)

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1 A The company never required training.

2 Q Okay. Let me read it to you again. Once the  
3 employee's skill level has been determined in each area  
4 the employee is expected to train without pay in order  
5 to advance at least two skill levels per year. Do you  
6 agree with that sentence?

7 A No.

8 MS. PATTERSON: Object to the form. Asked  
9 and answered.

10 Q (By Mr. Siurek) Tell me where in there it says  
11 that they are required to train.

12 A What you read me said they are required to  
13 train.

14 Q I'm not sure where we are getting -- and I  
15 apologize if there's some confusion here. I'm going to  
16 read it to you one more time and to your counsel.

17 MS. PATTERSON: I do think he's answered  
18 it. Why don't you show him a copy of it, so he can see  
19 it?

20 A Yeah, because I do agree what -- if you are  
21 asking me is that what their complaint was, then I'll  
22 agree with that.

23 MS. PATTERSON: We all know that's what it  
24 says. He's asking you if you agree with their  
25 allegations.

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1 Q So, you believe that the employees are paid for  
2 the time spent testing?

3 A The first sentence says, Initial test --

4 Initial test we pay.

5 Q Okay. Moving along. Each test takes about two  
6 to three hours to complete. Do you agree with that  
7 statement?

8 A Nope.

9 Q And it's your contention you mentioned an hour  
10 and a half, but you say as little as 45 minutes to take  
11 the test; is that right?

12 A One and a half hours is what we have set up  
13 that we now pay for in today's time. The proctored test  
14 is 45 minutes. You have an hour and a half for somebody  
15 to get there, get set up, go through the testing, turn  
16 in the paperwork, whatever. The testing is about 45  
17 minutes. The entire process is about an hour and a  
18 half.

19 Q Okay. Then it says, Once the employee's skill  
20 level has been determined in each area the employee is  
21 expected to train without pay in order to advance at  
22 least two skill levels per year until the employee has  
23 achieved the required skill level in all six categories.  
24 Do you agree with that statement?

25 A No, sir.

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1 A Right, and I don't.

2 Q (By Mr. Siurek) I'm very clear about that,  
3 Mr. Campbell, and we'll have plenty of time to vet all  
4 of our disagreements. I want to understand what you  
5 agree to and what you don't agree to. So, why don't I  
6 hand you what's been marked Campbell Exhibit No. 3, and  
7 ask you to turn to Page 2.

8 (Deposition Exhibit No. 3 was marked).

9 Q (By Mr. Siurek) Where it says, Dow Chemicals  
10 Mandatory Training Program, under that heading, there's  
11 a paragraph that begins, Dow Chemical requires each  
12 worker to take an initial test in each of six areas. Do  
13 you agree with that statement?

14 A Yes, sir.

15 Q Employees are not paid for time spent testing.  
16 Do you agree with that statement?

17 A Yes, I agree with that statement.

18 Q All right. So, the employees are not paid for  
19 time spent testing, right?

20 MS. PATTERSON: Objection to the form.

21 A Step back a minute. Re-ask that question.

22 Q (By Mr. Siurek) I'm reading it to you.

23 A I understand that.

24 Q Do you agree with that sentence?

25 A No.

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1 Q Is it your belief that employees are not  
2 expected to train?

3 MS. PATTERSON: Objection to form.

4 A We do not require them to train.

5 MR. SIUREK: And I object to the  
6 responsiveness of your answer.

7 Q (By Mr. Siurek) I want to know what you agree  
8 with here. Is it your belief that if they are not  
9 expected to train, then what is left other than not  
10 expected to train?

11 MS. PATTERSON: I think he's answered that.

12 A The two levels.

13 Q (By Mr. Siurek) Just so I'm clear, there is no  
14 expectation on the part of Dow -- I just want to make  
15 sure this is what you are going to tell the jury. That  
16 there's no expectation on the part of Dow on the skills  
17 initiative for the employees to train in order to  
18 advance?

19 A There is no requirement for the employee to  
20 train.

21 Q And I appreciate your answer, and I'm going to  
22 ask it again.

23 A Go right ahead.

24 Q Is there no expectation on the part of Dow for  
25 an employee to train to advance in the skills initiative

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1 program?  
2 MS. PATTERSON: Objection to form. Asked  
3 and answered.  
4 A No.  
5 Q (By Mr. Siurek) Okay. Now, based on there  
6 being no expectation for the employees to train, tell me  
7 what training was set up by Dow for the employees to  
8 use.  
9 MS. PATTERSON: Objection to the form.  
10 A Dow made training available. ACT training is  
11 what it was. ACT was the group that came in and spent  
12 time in the plant, looked at what the jobs were, and  
13 where the minimum level foundation skills should be.  
14 ACT has electronic built training stuff available. ACT,  
15 working with a local college, set up -- made this  
16 available through the college portal. If the employees  
17 wanted to go and work on this, we made it available.  
18 Q (By Mr. Siurek) Let me ask it to you this way:  
19 I understand ACT did it. I'm assuming Dow paid ACT to  
20 set up training for these employees?  
21 A Dow paid ACT to come in and evaluate the site.  
22 I don't believe Dow paid ACT anything related to the  
23 training. The college, being proactive, seeing training  
24 opportunities for the entire area, which has a lot of  
25 chemical companies, oil companies, etc., was working

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1 with ACT to go into the next what they saw as a future  
2 opportunity.  
3 Q Let me ask it again. Describe for me the  
4 components of the training for the employees that were  
5 required to test in the skills initiative and advance  
6 two levels. Describe the training that was provided to  
7 them by Dow.  
8 MS. PATTERSON: Objection to form.  
9 A There was, I believe, multiple type of  
10 training. There were -- I think there were actual  
11 classes trying to hit on the different abilities of what  
12 people relate to. So, I believe there are classes and  
13 there is electronic -- get out on the Web site, go  
14 through a portal, and you are at some training, some  
15 available training. I also believe, originally, there  
16 were some CDs available.  
17 Q (By Mr. Siurek) Do you know if there were  
18 workbooks available?  
19 A No, I don't.  
20 Q Well, let me ask it to you this way: Do you  
21 have any reason to doubt that there were workbooks?  
22 Hard copies of the CDs?  
23 A So, the question was: Do I have any --  
24 Q Reason to disagree with the --  
25 A No.

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1 Q Well, let me finish the question.  
2 A I'm sorry. Go ahead.  
3 Q It's my understanding that the CDs were also  
4 available in workbook form. Do you have any reason to  
5 believe that not to be the case?  
6 A I have no idea if there was or wasn't.  
7 Q Classes accessed through a portal on a  
8 Web site, CDs, and possibly workbooks. What other forms  
9 of training were available?  
10 A That Dow provided?  
11 Q Yes.  
12 A That's the best I know of.  
13 Q Are you including in the Web site access -- are  
14 you talking about the on-line training?  
15 MS. PATTERSON: Objection, form.  
16 A Yes, sir.  
17 Q (By Mr. Siurek) Were -- was there also  
18 tutorials available, one on one with tutoring?  
19 A I think that's right.  
20 Q And it's your contention that Dow didn't pay  
21 for that?  
22 A That Dow didn't pay for what?  
23 Q Tutoring.  
24 MS. PATTERSON: The tutors?  
25 MR. SIUREK: Yes.

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1 A Dow has an agreement with Brazos Port College  
2 that we did pay for the usage and stuff that -- if an  
3 employee went to the college and took a class, the  
4 employee didn't pay for the classes. Dow paid for the  
5 classes.  
6 Q (By Mr. Siurek) So, do I take from your answer  
7 that Dow paid for the training?  
8 MS. PATTERSON: Objection, form.  
9 A Through Brazos Port College.  
10 Q (By Mr. Siurek) Meaning, Dow paid Brazos Port  
11 for the employee who was training there?  
12 A Yes, sir.  
13 Q All right. Now, with -- let me say this to  
14 you, too: With regard -- let's stay on the training, if  
15 we can, for a minute. Now, I want to make sure I'm  
16 understanding the skills initiative, at least as I  
17 understand it, to this point. In 2003, the Collective  
18 Bargaining Agreement is ratified and the skills  
19 initiative program is instituted relative to the Union;  
20 is that right?  
21 A Yes, sir.  
22 Q The skills initiative program is a skills  
23 enhancement opportunity for employees that -- in  
24 addition to their full-time employment; is that correct?  
25 MS. PATTERSON: Objection, form.



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1 Q How do you know that?

2 A Because what we were told is what ACT was  
3 working on is not anything that was developed for Dow,  
4 in particular. It is an overall process that they use  
5 to go out in a manufacturing kind of plant. And so,  
6 they used, in our testing -- and I don't know if all of  
7 their questions were validated at the time, but the only  
8 questions that we used when people were going through  
9 the assessment that counts, whatever, was validated  
10 questions.

11 Q All right. Were you part of that process?

12 A No.

13 Q In other words, I don't want to put words in  
14 your mouth, but I want to move on. Your understanding  
15 is, is that this testing was validated by its designers  
16 and that information was conveyed to you. And it's your  
17 understanding whatever was done validated the test for  
18 purposes of its use in the skills initiative?

19 A Yes, sir.

20 Q And that was done by ACT?

21 A Yes, sir.

22 Q Are you aware of any information between Dow  
23 and ACT that ACT asks for information relative to  
24 testing validation from Dow?

25 A Would you restate that again?

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1 requirements of the CBA that say, In each skill level --  
2 strike that. Each employee will be required to take a  
3 skills assessment to determine the level they are at  
4 paid for by the company. Once the skill level has been  
5 determined an employee will be required to move up at  
6 least two skill levels per year until the employee has  
7 achieved the required level in all the skill categories.  
8 So, how did you fit into the compliance that was  
9 required by the employees during the first year of the  
10 CBA?

11 A Actually, the first year it was longer than a  
12 year because the first actual measurement date was due  
13 December 31st, 2004, and the contract went into effect  
14 May of 2003. So, the first one, I think, was 18 months.  
15 But once the process was developed, the college -- after  
16 the FERPA had been signed, the college would send  
17 somebody that reports to me an Excel spreadsheet that  
18 had the agreed upon items in it.

19 Q I want to focus on that for a minute. Tell me  
20 what was sent to you by the college, as you recall.

21 A It was an Excel spreadsheet that had items that  
22 the Union and the company had agreed upon. I believe it  
23 would be, like, seven questions. And I'm just trying to  
24 remember this off of my head, but it was: Have they  
25 assessed in Foundational 1? Have they assessed in

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1 Q Yes. Are you aware of any correspondence or  
2 communication between ACT and DOW where ACT is  
3 requesting information so that the application of its  
4 testing can be validated by ACT?

5 A I'm not sure I totally understand the question.

6 Q Well, I'm hearing you tell me that ACT  
7 validated the test.

8 A The -- I believe that there are some questions  
9 where they covered an ACT test or not, I don't know, but  
10 where there's some questions that had to go through a  
11 certain amount of validation. Before they could be  
12 validated, it would be yes. I don't know if that was on  
13 the next set of tests, process technology testing, or if  
14 that was on foundational skills.

15 Q But you do remember some traffic correspondence  
16 between ACT and Dow relative to the validity of some  
17 testing?

18 A Yes. I believe that was around the process  
19 technology because that was something that didn't exist.  
20 The foundational skills thing existed. Process  
21 technology did not exist. We still worked through ACT  
22 while we were developing the next level of training.

23 Q Okay. I think I understand. Now, walk me  
24 through 2004. In other words, 2003, the CBA is  
25 implemented. 2004, what is your role in terms of the

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1 Foundational 2? Have they reassessed in 1 and 2? It  
2 had six more after that that would have each of those --  
3 each of the categories named and it would have -- and  
4 all of these were just indicated by an X. If they had  
5 an X in it, then they had done whatever it was, yes,  
6 they would assess. Yes, they would reassess. If one of  
7 the six levels or the six categories had an X, it means  
8 they had profiled it. Otherwise, everything was blank.

9 Q Is that all you had access to during that  
10 period of time?

11 A No. Up until -- that was '03, to probably, I  
12 think, October of '04, is the date it changed.

13 Q Then what happened in October of '04?

14 A Conversations with the Union regarding concerns  
15 on the two levels, that there were people out there that  
16 were actually -- were not going to -- maybe, because  
17 this was still early, September, October timeframe, that  
18 there were concerns that some of the people were not  
19 going to obtain the two levels, but they were trying to  
20 obtain the two levels. From those conversations, we  
21 said, Well, we better be prepared for this. The Union  
22 was worried, Hey, you know, into 2004, it says  
23 discipline is going to be applied.

24 So, working together, what we agreed to do was  
25 get the college to provide a little bit more



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1 information. And it was the hours that people worked on  
2 -- online or in class. So, I think October of 2004, is  
3 the first time we actually saw hours outside of the fact  
4 that prior to then I would get a report that would just  
5 tell me person, eight hours or greater. What was  
6 significant on there is we paid for eight hours of time  
7 that people put into this. It had to do with a  
8 tutorial, an orientation, whatever you want to call it.

9 If you want to use anything that the college  
10 has available, you need to know how to use it. So, we  
11 paid for the first eight hours. We finished the  
12 assessment and got paid for that assessment, the  
13 original assessment. Then we paid for the next eight  
14 hours. At that time, the orientation was actually eight  
15 hours. They'd show you how to do it. They'd actually  
16 log you on. You would work -- go through some of this  
17 stuff.

18 And the thought process was in most -- in many  
19 of the cases in that eight-hour class that they were  
20 taking they would get two levels during that time. So,  
21 originally, I would get a thing that would tell me eight  
22 hours so that I would know that employee needs to be  
23 paid for those hours.

24 Now, starting in October of '04, now they just  
25 gave me -- this one was included in the whole report.

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1 It just added two columns. I mean, it would say, Online  
2 and class. Yeah, Online and class time. And it would  
3 actually have hours in there.

4 Q And you began receiving that in October of '04?

5 A Yes, sir.

6 Q And let's just take that up -- for purposes of  
7 our conversation today -- up through the end of November  
8 of '06. Did you receive that report for that period of  
9 time?

10 A Yes, sir.

11 Q Does that report still exist?

12 A I don't -- do I still get that information? I  
13 don't think so.

14 Q No. I mean, do you still have access to the  
15 report? Not do you get it currently. In other words,  
16 do you receive that report from October of '04, to the  
17 end of -- excuse me, sometime in November of '06? Does  
18 the report containing that data still exist?

19 A Yes, sir.

20 Q And describe it for me, again, so I'm clear.  
21 It has two new columns?

22 A Yes, sir.

23 Q That say what? What's the header?

24 A I'm trying to go off the top of my head. I  
25 think it says, Classroom hours and online hours.

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1 Q And would you generically call those training  
2 hours?

3 A I'm going -- if you want to call it generic,  
4 that means they were going out to the college and  
5 logging into the college portals accessing the training  
6 that was made available out at the college.

7 Q Okay. So, this would give you a snapshot by  
8 employee, each employee, of the amount of class hours  
9 and online hours, which generically I'm referring to as  
10 training. How often was that reported to you?

11 A Once a month and only for those employees who  
12 would sign the release.

13 Q Okay. Now, at this point, October of '04, is  
14 Dow expecting employees who are not reaching the  
15 required skill levels to be training?

16 A At this time, we're still not requiring anybody  
17 to train. What we are doing is listening to the  
18 concerns that the Union was having at this time about  
19 people. Based off of what the language said it says,  
20 Two levels. So, Union had concerns, Holy toledo, we  
21 might have a lot of people that don't have two levels.  
22 What can we be looking at? And so, now we are just  
23 working together, brainstorming ideas, what are some  
24 possible options. That's all we are doing at that time.

25 Q Okay. What did you decide to do?

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1 A What did we decide to do? As it relates in  
2 2005, the Union and company signed an agreement related  
3 to this.

4 Q Okay. And did it -- what do you remember --  
5 what was the agreement about?

6 A The agreement had to do with -- the language  
7 required two levels, but in the language it talks about  
8 -- and I want to refer to this because I don't want to  
9 say anything wrong -- it talks about however employees  
10 clearly working toward achieving the skills but simply  
11 needing additional time in achieving required levels may  
12 be given additional time and opportunity to succeed.  
13 That's what the Union had focused in on. You know, I've  
14 got some people out there that are trying to achieve the  
15 two levels. Can we look at an effort that they are  
16 putting out and consider that versus just the Dow  
17 requirements of two levels? So, that's what we started  
18 working on.

19 Q All right. And that resulted in an agreement?

20 A Yes, sir.

21 Q Okay. Mr. Campbell, I'm going to show you what  
22 I'm going to mark as Campbell Exhibit No. 5, and ask you  
23 if that is the agreement you just discussed in your  
24 previous testimony.

25 (Deposition Exhibit No. 5 was marked).

Robin Campbell - April 2, 2009

Roy Maynor vs. The Dow Chemical Company

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1 not created by us but presumably relative to certain  
 2 exemptions under the Freedom of Information Act. If we  
 3 could, it talks about the status of compliance. And  
 4 there must have been something whited out that says --  
 5 stated that, Beginning in 2003, Dow began an assessment  
 6 and training program for the hourly paid operators at  
 7 the Freeport, Texas plant. Dow, along with Brazos Port  
 8 College, developed a program they believed would provide  
 9 necessary skills for employees to be able to properly  
 10 complete their job. Is that a true sentence?

11 A I don't know. I know that Dow paid Brazos Port  
 12 College to address a gap that they had. They worked  
 13 with Brazos Port College. I don't know if Dow worked  
 14 along with them to develop the program.

15 Q Is the answer, I don't know if that's true?

16 A I'll say I don't know if that's true.

17 Q Then it goes on to say, Each employee was  
 18 required to take an initial assessment in each of these  
 19 six areas. The times spent in the initial assessment  
 20 was paid for by Dow. Once the employee's skill level  
 21 was determined in each area, the employee was expected  
 22 to train without pay in order to advance at least two  
 23 skill levels per year until the employee had achieved  
 24 the required skill level in all six categories. Is that  
 25 a correct sentence?

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1 A No.

2 MS. PATTERSON: Objection to the form. You  
 3 asked him that question several times referring to the  
 4 DOL letter earlier.

5 A No.

6 Q (By Mr. Siurek) So, in this document what the  
 7 DOL writes is not true?

8 A If that's who wrote this, then, no, that's not  
 9 true.

10 Q Okay. Then it goes on to say, The training was  
 11 provided through Brazos Port College, but was  
 12 specifically developed by both Dow and Brazos Port. Is  
 13 that a true statement?

14 A From what I know, no.

15 Q Okay. So, the second false statement in a  
 16 document from the Department of Labor. Is that your  
 17 testimony?

18 A Yes, sir.

19 Q Okay. As part of the requirements of the  
 20 training program, Dow required each employee to sign an  
 21 authorization allowing Dow to have access to the  
 22 training records of the employees. Understanding your  
 23 objection to the notion of requirement of training, was  
 24 -- did Dow require each employee to sign an  
 25 authorization allowing them access to training records?

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1 A No.

2 Q Why was Mr. Maynor terminated?

3 A Because he was -- we had on the skills  
 4 initiative -- he didn't meet the two level requirements  
 5 each year. And as far as we could tell, he had no  
 6 activity, whatsoever.

7 Q Okay. All right. In other words, am I correct  
 8 that your testimony is, that you did not require  
 9 employees to provide you with access to the records of  
 10 their training hours? Is that your testimony today?

11 A What I'm trying to say is that the only way for  
 12 us to know if you had activity was for the college to  
 13 release the information. It could only be released from  
 14 a signing of a FERPA. So, you either don't sign a  
 15 FERPA, or you didn't do anything in training, if you had  
 16 done something in training.

17 Q Again, I appreciate your answer. Did Dow  
 18 require an authorization for access to that information  
 19 or not?

20 MS. PATTERSON: Objection to form. What  
 21 information?

22 MR. SIUREK: Training records from the  
 23 college.

24 A No.

25 Q (By Mr. Siurek) All right. Then it says, The

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1 time spent by employees in studying for this training  
 2 program, as well as the time spent in retaking the  
 3 reassessments, was not paid by Dow. True or not true?

4 A My mind is somewhere else a minute. Can we go  
 5 back to that question? I'm thinking about what you are  
 6 asking me. And the requirement from Dow is, you are  
 7 required to do two levels. Okay? We've clearly shown  
 8 that, as far as the CBA, once you assessed, if you  
 9 didn't profile, you had to improve two levels per year.  
 10 The only way Dow would know if you got those two levels  
 11 is if you released the information to us. Okay? Okay.

12 Q Okay. Okay. Then it says, The time spent by  
 13 employees in studying for this training program, as well  
 14 as the time spent in taking the reassessments, was not  
 15 paid by Dow. Correct statement?

16 A Correct.

17 Q Okay. The complainant, Mr. Singletary, was the  
 18 business manager and was not an affected party in the  
 19 case -- we'll move on to the next. All right. Then we  
 20 go on. Section 6, there's no violations disclosed.  
 21 Here is the next, Section 7. ER -- I will gather is the  
 22 employer. I think it's nomenclature. Just assume with  
 23 me that that's what that means -- was found to have  
 24 failed to pay EE's -- and I'm going to assume that's  
 25 employees -- for all HW. We can assume that means all

Robin Campbell - April 2, 2009

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1 stated that Dow has attempted to achieve compliance by  
2 removing any disciplinary action, period. I would have  
3 said that. I'm not saying that I would have said that  
4 is associated with the training program.

5 Q (By Mr. Siurek) Okay. It goes on to say,  
6 Mr. Campbell went on to say that all disciplinary action  
7 that was placed upon employees in the past for failing  
8 to fulfill the requirements of the training program  
9 under the CBA was also removed as of 1-1, 2007. First  
10 question: Did you say that?

11 A I would have said something similar to that.  
12 I'm not going to say I made that exact statement, and  
13 the reason -- I'm just going to say no.

14 Q That you didn't say this?

15 A I'm going to say that I did not say that exact  
16 statement.

17 Q Do you remember what you did say?

18 A I would have said that as we are working  
19 through the Department of Labor and coming up with a  
20 settlement, that for active employees we would go and it  
21 would go and remove discipline related to the skills  
22 initiative.

23 Q Just so I'm clear, you have added active  
24 employees. And you are saying disciplinary action  
25 related to the skills initiative program instead of the

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1 A Yes, sir.

2 Q And was that spreadsheet created by you?

3 A Yes, sir.

4 Q And I understand that you didn't agree with it,  
5 but I'm just making sure I understand where 2.67 million  
6 dollars came from. Data compiled by you at the request  
7 of the Department of Labor?

8 A That is true, as per the request of what they  
9 were looking for.

10 Q I understand. Then it says -- you stated that  
11 Dow's requirements were only for the employees to move  
12 up two steps or make a reasonable effort to move up two  
13 steps. First of all, did you say that?

14 A Yes, sir.

15 Q Okay. Now, for purposes of 2003, 2004, 2005  
16 and most of 2006, that's not true, is it?

17 A What?

18 Q That the requirement was they only move up two  
19 steps or make a reasonable effort.

20 A As it related to the Department of Labor and  
21 the discipline that they were looking at, discipline  
22 never went into effect until 2005. At that time is when  
23 we worked through this information that they are  
24 discussing right here.

25 Q And I'm going to ask you the same question

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1 words used here; is that right?

2 A Yes, sir.

3 Q Okay. The last sentence here -- no, we'll keep  
4 moving along. Mr. Barrow discussed the potential for  
5 liability by Dow if they choose to continue the amount  
6 of training taken by the employees. Mr. Barrow stated  
7 that Dow may wish to further disassociate themselves  
8 from the requirements of the training program by not  
9 monitoring the training time or classes the employees  
10 are involved in.

11 Without regard to your view about whether or  
12 not training is compensable, after this meeting, did you  
13 continue to monitor training hours of the employees that  
14 were participating in the skills initiative?

15 A No.

16 Q It goes on to say, Mr. Campbell stated he did  
17 not agree with the 2.67 million dollar back wage figure  
18 that was originally presented. Okay. What 2.67 million  
19 dollar back wage figure?

20 A The spreadsheet, as requested by the Department  
21 of Labor, was put together as requested by the  
22 Department of Labor. It listed all hours attributed  
23 with the skills initiative.

24 Q Okay. And that spreadsheet totaled up to be  
25 unpaid wages of 2.67 million dollars?

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1 which is, it says, Dow's requirements were only that  
2 they move up two steps or make a reasonable effort to  
3 move up the two steps for the calendar year 2003, 2004,  
4 2005, until November 20th of 2006. That was not a true  
5 statement, correct?

6 A I don't understand what you are asking, so I  
7 don't know what to answer.

8 Q Well, employees were required to do more than  
9 make reasonable efforts to advance two levels; isn't  
10 that correct?

11 MS. PATTERSON: During that period of time?

12 MR. SIUREK: Yes.

13 A No.

14 Q (By Mr. Siurek) And where do you get that  
15 requirement being different than what's in the CBA?

16 A Because by the time -- the first time you ever  
17 go into any impact that relates to the CBA is 2005. By  
18 2005, February of 2005, we had come to an agreement  
19 which is, if you quote the contract made, whatever it  
20 says, employees clearly work toward achieving the skills  
21 but simply needed additional time. As we worked through  
22 this with the Union to resolve this issue that  
23 terminology shortened, so we didn't have to quote that  
24 every time. We just said, Reasonable efforts. So,  
25 during anything related to this program by the time

33 (Pages 129 to 132)



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1 anything gets addressed it is the two levels are a  
2 reasonable effort.

3 Q And then it says, A reasonable effort was  
4 defined by the company along with the Union as a minimum  
5 of 40 hours of training. And I understand your position  
6 about the February 2005, disciplinary action memo, which  
7 is Exhibit 5, correct?

8 A Yes, sir.

9 Q Okay. It says, Mr. Campbell believes that, at  
10 most, Dow should be responsible for 40 hours of training  
11 by the employees and not for any additional time  
12 employees spent training. Did -- first of all, did you  
13 say that that's what you believed?

14 MS. PATTERSON: Objection to the form.

15 A This is a note written by somebody else. In a  
16 whole bunch of conversations, in one aspect of a  
17 conversation that we had, did I make this statement  
18 right here? That would be true.

19 Q (By Mr. Siurek) Okay.

20 MS. PATTERSON: And I just want to say that  
21 any statements were made in the context of a settlement  
22 in negotiation with the Department of Labor.

23 MR. SIUREK: If that's an objection, I'll  
24 address it, which is, we are going to take the position  
25 there's no settlement.

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1 total of information that I'm hearing so far is a number  
2 of meetings and a very detailed spreadsheet that was  
3 made by you provided to the Department of Labor in a  
4 position statement that was done by legal counsel?  
5 That's as much as you know in terms of the information  
6 that was available at the time?

7 A Yes, sir, assuming I probably gave them a  
8 language associated with the Collective Bargaining  
9 Agreement.

10 Q Okay. It says, DD Barrow again did not agree  
11 with the offer. Barrow requested an additional  
12 conference with a Dow representative. This conference  
13 call was held on April 27th, 2007. It looks to me to be  
14 something along the lines of maybe three months later.  
15 Does that sound right to you?

16 A I don't know.

17 Q Okay. And then in this conversation,  
18 Mr. Barrow informed Harkins that the number that was  
19 being proposed wasn't reasonable and that he informed  
20 Mr. Harkins they would be given two options. Do you see  
21 that?

22 A Yep.

23 Q What is your understanding of what was being  
24 offered by the Department of Labor to Dow to resolve the  
25 complaint made by the Union with regard to the claims

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1 MS. PATTERSON: Well, I understand, but you  
2 do understand -- I mean, I think to the extent he said  
3 he believed anything along those lines, it was -- this  
4 whole document, which was presumably faired by somebody  
5 at the DOL, documents discussions about how to resolve a  
6 complaint. Whether or not we agreed with the validity  
7 of the complaint or not, we had to resolve it.

8 MR. SIUREK: I understand your position,  
9 and it's an admissibility question that would obviously  
10 come up later.

11 MS. PATTERSON: Sure, absolutely. There's  
12 no question about it.

13 Q (By Mr. Siurek) My question is this: Did you,  
14 at the time, believe that Dow should be responsible for  
15 40 -- no more than 40 hours of training?

16 A No.

17 Q Okay. You believe that they should be  
18 responsible for zero?

19 A That is a true statement.

20 Q In the context of resolution, you believe no  
21 more than 40 should be paid?

22 A Yes, sir.

23 Q Understood. Okay. Then there is a redactive  
24 period. And again says, After reviewing this  
25 information. And, again, am I correct that your sum

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1 for the skills initiative participation?

2 A I have no knowledge.

3 Q In other words, the conversations about the  
4 options were not had with you?

5 A I'm not sure that's exactly how you asked the  
6 question.

7 Q Did you have any information during the  
8 discussions with the Department of Labor on whether Dow  
9 was going to receive two options from the Department of  
10 Labor on how to resolve the complaint made by the Union?

11 A I don't recall.

12 Q Okay. Well, were the options given to you?

13 A I believe most of -- let's -- when it comes  
14 between the Department of Labor's legal process and  
15 Dow's legal process, these conversations go on between  
16 the lawyers. When the lawyers need to engage with me,  
17 if I'm representing some of Dow's position, they will  
18 get with me then. I do not know of all conversations  
19 that go on between them. So, I'll answer what I  
20 remember.

21 Q And that's all I'm asking you to do, is to tell  
22 me what you know.

23 A I don't remember if I was involved in every  
24 option that they discussed.

25 Q Was it ever your understanding that Dow could



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1 make one of two choices, to resolve the claim by the  
2 Union for the unpaid wages?  
3 A These two options or something similar to them  
4 was covered with me.  
5 Q And what did you understand, if anything, the  
6 difference in the two options?  
7 A Robin's assumption, in his own terminology: If  
8 we went three years, the Department of Labor would say  
9 we -- I can't remember what their terminology was -- we  
10 kind of agreed with what they're doing. It would not  
11 limit an employee from coming and suing the Dow Chemical  
12 company. The second option was, you go two years. It's  
13 a self-audit. Department of Labor is not saying  
14 anything and an employee can still sue. So, in both  
15 cases, the employee can still sue us.  
16 Q That's your understanding?  
17 A Yes, sir.  
18 Q Okay. Do I take from your answer your  
19 understanding was that Dow was not settling with any of  
20 the employees?  
21 MS. PATTERSON: Objection to the form.  
22 MR. SIUREK: I want my record clear. Tell  
23 me what your objection is.  
24 MS. PATTERSON: I'm not sure what you are  
25 meaning the term settling to be. Releasing all claims

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1 or...  
2 Q (By Mr. Siurek) Do you understand what the  
3 term settle is, settle a claim?  
4 A No, I'd like you to define that, so I don't  
5 make my assumption of how I'm going to answer that  
6 question.  
7 Q Assume with me that it's going to be a question  
8 a jury is going to be real interested to hear. So,  
9 let's go ahead and make sure we are clear then. Do you  
10 have any understanding, based on what you knew the  
11 options to be, that any one of the Dow Union members who  
12 were included in the complaint by the Union were  
13 released in the agreement with the Department of Labor  
14 so that their claims were settled?  
15 MS. PATTERSON: Object to the question. It  
16 calls for a legal conclusion. Answer to the extent you  
17 are able.  
18 A Robin's recollection of this was that no matter  
19 what we did, if an employee wanted to come and sue Dow,  
20 they could come and sue Dow.  
21 Q (By Mr. Siurek) Was that your understanding?  
22 A Yes, sir.  
23 Q Do I take from your answer that you believed  
24 that the payment of this money did not release Dow from  
25 liability to any of those employees?

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1 MS. PATTERSON: Objection to the form.  
2 A In my opinion, yes, sir.  
3 Q (By Mr. Siurek) Did anyone discuss with you  
4 either at the Department of Labor or within the  
5 conversations you had with Dow the idea of a Department  
6 of Labor supervised settlement?  
7 A I don't remember if they -- if they discussed  
8 that with me.  
9 Q Do you know what a Department of Labor  
10 supervised settlement is?  
11 A I have my own opinion; but no, I don't know.  
12 Q Tell me what your opinion is.  
13 A Well, in my opinion, if the Department of Labor  
14 supports our settlement, it takes everything on a whole  
15 different -- a whole different scale, as far as people  
16 being released or included in a settlement.  
17 Q And so, what happens?  
18 A If we were at that point, then really the case  
19 closed at the end of this.  
20 Q When you mean closed, does that mean that the  
21 people who received money would be required to give  
22 releases?  
23 A Yes, sir.  
24 Q And this was not, to your understanding, a  
25 Department of Labor supervised settlement?

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1 MS. PATTERSON: Objection to form. Go  
2 ahead.  
3 A In my opinion, it was clear that no matter what  
4 Dow did in this, that it was not going to be a closed  
5 case. Let's put it that way.  
6 Q (By Mr. Siurek) Well, let me ask it again,  
7 because I want to make sure I get an answer. In your  
8 view, what occurred in this case was not a supervised  
9 settlement by the Department of Labor with regard to  
10 this complaint. True or false?  
11 MS. PATTERSON: Objection to the form.  
12 A If how I described it in my own words meets the  
13 question that you are asking me, then I'll say true.  
14 Q (By Mr. Siurek) Okay. Are you familiar with  
15 what a WH56 and a WH58 are?  
16 A No earthly idea.  
17 Q All right. Do you know if those are documents  
18 that are required for a Department of Labor supervised  
19 settlement?  
20 MS. PATTERSON: Objection, form.  
21 A No, I don't.  
22 Q (By Mr. Siurek) All right. Then we drop down,  
23 and it looks as though there was some data -- see where  
24 it starts with, Testing time? There's some data here  
25 that looks like it is presented in this document. And

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1 for paying employees spent for two assessments when in  
2 actuality they only paid employees for the time they  
3 spent in one assessment. Do you see that sentence?  
4 A Yes, sir.  
5 Q Do you have any understanding of what that  
6 means?  
7 A Yes, sir.  
8 Q Tell me your understanding of what that means.  
9 A It's stated completely wrong, but what it was,  
10 was that from a review of the spreadsheet, we paid, as I  
11 discussed earlier, the first eight hours of orientation.  
12 Okay?  
13 Q Yes, sir.  
14 A However, the person that was putting together  
15 the spreadsheet, based on what I was telling them,  
16 subtracted the eight hours, again, as time already paid.  
17 So, an eight hours of orientation got subtracted twice  
18 when it should have only been taken out once. When we  
19 saw that, we called the Department of Labor and told  
20 them we were going to make another pay based on who  
21 didn't get their full pay on that.  
22 Q Because of the double deduction?  
23 A Yes, sir.  
24 Q And just so I can close the corral, it's your  
25 position and Dow's position that, at least as to all of

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1 the initial assessments, each employee was paid for that  
2 time?  
3 A Yes, sir.  
4 Q Okay. Let me just ask you a couple of  
5 questions, and then I'm going to take a couple minute  
6 break and we may be done. I think we've covered this  
7 earlier. Each of the Plaintiffs in this case -- are you  
8 aware, I should ask you, that each Plaintiff in this  
9 case is a member of the collective bargaining unit that  
10 is described in Exhibit No. 1?  
11 A Are or were?  
12 Q Are or were, both.  
13 A Yes, sir.  
14 Q And that all of those individuals are or were  
15 employees of Dow?  
16 A Yes, sir.  
17 Q All right. And that, I think we've covered it  
18 before, as hourly, nonexempt employees, they are all  
19 covered by the Fair Labor Standards Act?  
20 A Yes, sir.  
21 Q All right. And what we also cover, to the  
22 extent any of them were paid or owed money for the --  
23 any skills initiative participation, if it was over 40  
24 hours a week -- excuse me, if it was in excess of a  
25 40-hour work week, they either were paid or are owed at

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1 time and a half?  
2 MS. PATTERSON: Objection to the form.  
3 A Can we repeat that one?  
4 Q (By Mr. Siurek) Sure. The skills --  
5 participation in the skills initiative assessment was in  
6 addition to their scheduled work time at Dow?  
7 A As the way the program was set up. I'm not  
8 saying that's a true statement, that there wasn't  
9 training and stuff that went on during regular work  
10 hours; but as far as the program was set up, yes, sir.  
11 Q Then by extension, if an employee participated  
12 in the skills initiative program after or in excess of a  
13 40-hour work week that they put in at the plant, they  
14 would -- or if they were compensated -- were they  
15 compensated at time and a half? Or if they weren't,  
16 should they have been compensated at time and a half?  
17 MS. PATTERSON: Objection to form.  
18 Q (By Mr. Siurek) Strike the question. Are  
19 these guys owed overtime if they are owed money?  
20 MS. PATTERSON: Objection to the form. Are  
21 you saying are they owed time and a half? What's  
22 overtime, Mark? Are you using that as a euphemism for  
23 time and a half? Objection to the form.  
24 A If the ruling was his time was compensable and  
25 the data showed it was done outside of the regular work

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1 schedule, then it would be at the agreed upon overtime  
2 rate.  
3 Q (By Mr. Siurek) Which is?  
4 A Time and a half.  
5 Q Thank you. Now, relative to the training hours  
6 only, meaning the online time and the class time, that  
7 was first made available to you on a regular basis  
8 beginning in October of 2004. True?  
9 A Yes, sir.  
10 Q And at least from October of 2004, til November  
11 of 2006, you were aware of each employee that was  
12 engaging in training hours on an individualized basis,  
13 correct?  
14 A If they signed the FERPA, yes, sir.  
15 Q Okay. How many employees do you believe didn't  
16 sign the FERPA?  
17 A One.  
18 Q Okay. So, everybody but Mr. Maynor?  
19 A Yes, sir.  
20 Q All right. And with regard to training, would  
21 you agree with me that the two components that you were  
22 aware of were not the only training tools available to  
23 the Dow employees who participated in the skills  
24 initiative program?  
25 MS. PATTERSON: Objection to the form.